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13 Attorneys for Defendant
14 LABORATORY CORPORATION OF
15 AMERICA

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 JUANA BRYDON

19 Plaintiff,
20 vs.

21 LABORATORY CORPORATION OF
22 AMERICA (a Delaware Corporation);
23 WHITNEY HUMPHREY (an Individual);
24 JASMINE DUFFEY (an Individual);
CYNTHIA NELSON (an Individual);
LINDSEY WILLIAMS (an Individual);
LETTY DOE (an Individual); LANA DOE
(an Individual); and DOES 1-100,
inclusive,

Defendants.

Case No.: 5:23-cv-00694

**DEFENDANT LABORATORY
CORPORATION OF AMERICA'S
NOTICE OF REMOVAL PURSUANT
TO 28 U.S.C. §§ 1332, 1441, AND 1446**

[DIVERSITY JURISDICTION]

(Riverside County Superior Court, Case
No. CVRI2300488)

*[Filed concurrently with Defendant's
Fraudulent Joinder Memorandum of
Point of Authorities in Support of Notice
of Removal, Request for Judicial Notice,
and Declaration of Lauren Elvick]*

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
2 DISTRICT OF CALIFORNIA AND TO ALL PARTIES AND THEIR
3 COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE** that, Defendant Laboratory Corporation of America
5 (“Labcorp” or “Defendant”) hereby removes the above-entitled action from the
6 Superior Court of the State of California in and for the County of Riverside, Case No.
7 CVRI2300488 to the United States District Court for the Central District of
8 California. This Court has diversity jurisdiction over this lawsuit pursuant to 28
9 U.S.C. §§ 1332, 1441, and 1446.

10 **I. BACKGROUND AND PLEADINGS**

11 1. On February 1, 2023, Plaintiff filed this underlying lawsuit against
12 Labcorp, Whitney Humphrey (“Humphrey”), Jasmine Duffey (“Duffey”), Cynthia
13 Nelson (“Nelson”), Lindsey Williams (“Williams”), Letty Doe (“Letty”), Lana Doe
14 (“Lana”), (collectively, “Defendants”) in the Superior Court of the State of California,
15 County of Riverside, Case No. CVRI2300488 (the “State Court Action”). In the
16 Complaint, Plaintiff alleges the following claims for relief:

- 17 1) discrimination on the basis of race in violation of the Fair Employment
18 and Housing Act (the “FEHA”) against Labcorp;
- 19 2) harassment on the basis of race in violation of the FEHA against
20 Defendants;
- 21 3) discrimination on the basis of age in violation of the FEHA against
22 Labcorp;
- 23 4) harassment on the basis of age in violation of the FEHA against Labcorp,
24 Letty, and Lana;
- 25 5) discrimination on the basis of disability in violation of the FEHA against
26 Labcorp;
- 27 6) harassment on the basis of disability in violation of the FEHA against
28 Defendants;

- 1 7) retaliation for engaging in a protected activity in violation of the FEHA
 2 against Defendants;
- 3 8) failure to prevent discrimination, harassment, and retaliation in violation
 4 of the FEHA against Defendants;
- 5 9) wrongful termination in violation of public policy against Labcorp;
- 6 10) violation of Labor Code Section 1102.5 against Labcorp and Williams;
- 7 11) intentional infliction of emotional distress against Defendants;
- 8 2. A true and correct copy of the Complaint filed in the State Court Action
 9 is attached hereto as **Exhibit A**. A true and correct copy of the Summons filed in the
 10 State Court Action is attached hereto as **Exhibit B**. A true and correct copy of the
 11 Civil Case Cover Sheet filed in the State Court Action is attached hereto as **Exhibit C**.
 12 A true and correct copy of the Notice of Department Assignment filed in the State
 13 Court Action is attached hereto as **Exhibit D**. A true and correct copy of the
 14 Certificate of Counsel filed in the State Court Action is attached hereto as **Exhibit E**.
 15 A true and correct copy of the Notice of Case Management Conference filed in the
 16 State Court Action is attached hereto as **Exhibit F**. These materials comprise “all
 17 process, pleadings, and orders served” upon Labcorp in the State Court Action. *See*
 18 28 U.S.C. § 1446(a).

19 3. The State Court Action is a civil action of which this Court has original
 20 jurisdiction under 28 U.S.C. § 1332 (diversity jurisdiction) and is one that may be
 21 removed to this Court by Labcorp pursuant to the provisions of 28 U.S.C. § 1441(b),
 22 in that it is a civil action between citizens of different states, and the amount in
 23 controversy exceeds the sum of \$75,000.

24 **II. CITIZENSHIP OF THE PARTIES**

25 **A. Plaintiff is a Citizen of California**

26 4. To establish citizenship for diversity purposes, a natural person must be
 27 both (a) a citizen of the United States and (b) a domiciliary of one particular state.
 28 *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence

1 is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d
 2 514, 520 (10th Cir. 1994). Here, the Complaint alleges: “Plaintiff JUANA BRYDON
 3 is, and at all times mentioned in this Complaint was, a resident of the County of
 4 Riverside, California.” (Complaint ¶ 1). Labcorp further alleges that at the time the
 5 State Court Action was filed and at the time of filing of this Notice, Plaintiff was, and
 6 still is, a natural person domiciled and residing in the State of California, and a citizen
 7 of the State of California.

8 **B. Labcorp is a Not a Citizen of California**

9 5. Labcorp is not a citizen of California. For diversity purposes, a
 10 corporation is deemed to be a citizen of the state in which it has been incorporated and
 11 the state where it has its principal place of business. *See* 28 U.S.C. § 1332(c)(1).

12 6. Labcorp is a corporation organized under the laws of Delaware under the
 13 name “Laboratory Corporation of America.” Labcorp was, and still is, a duly formed
 14 Delaware corporation in good standing at the time the State Court action was filed and
 15 at the time of the filing of this Notice. (*See also* Complaint ¶ 2(a) (Labcorp “is a
 16 Delaware Corporation.”)). Thus, Labcorp is a citizen of Delaware based upon its
 17 place of incorporation.

18 7. The “‘principal place of business’ refers to the place where the
 19 corporation’s high level officers direct, control, and coordinate the corporation’s
 20 activities,” i.e., the corporation’s “nerve center.” *Hertz Corp. v. Friend*, 559 U.S. 77,
 21 81 (2010). The relevant considerations under the “nerve center” test include the
 22 following: (a) where the directors and stockholders meet; (b) where the executives
 23 live and have their offices; (c) where the administrative and financial offices are
 24 located and the records kept; (d) where the corporate income tax return is filed; (e)
 25 where the “home office” is located; and (f) where day-to-day control of the business is
 26 exercised. *See Unger v. Del E. Webb Corp.*, 233 F. Supp. 713, 716 (N.D. Cal. 1964).
 27 At the time the State Court Action was filed and at the time of filing of this Notice,
 28 Labcorp’s corporate headquarters and principal place of business was, and still is,

1 Burlington, North Carolina. Labcorp's executives direct, control and coordinate the
 2 corporation's activities from Labcorp's headquarters in Burlington, North Carolina.
 3 Thus, Labcorp is a citizen of North Carolina, based upon its principal place of
 4 business.

5 8. Plaintiff is a citizen of California, and Labcorp is not a citizen of
 6 California. Therefore, diversity of citizenship exists between Plaintiff and Labcorp.

7 **C. The Citizenship of Other Named Defendants Must be Disregarded**

8 9. The Complaint alleges Defendants Humphrey, Duffey, Nelson, Williams,
 9 Letty, and Lana are citizens of California. (Complaint ¶¶ 2(b) - (h)). Their
 10 citizenship, however, should be disregarded for purposes of determining diversity
 11 because Plaintiff cannot state a cause of action against Humphrey, Duffey, Nelson,
 12 Williams, Letty, and Lana; therefore, these individual defendants are named as sham
 13 defendants. As set forth in detail in the concurrently filed Memorandum of Points and
 14 Authorities in Support of Removal, Plaintiff fraudulently joined Humphrey, Duffey,
 15 Nelson, Williams, Letty, and Lana as defendants for purposes of defeating diversity
 16 jurisdiction, and their citizenship should be disregarded.

17 **D. The Citizenship of the Doe Defendants Must Be Disregarded**

18 10. Pursuant to 28 U.S.C. § 1441(a), the residence of fictitious and unknown
 19 defendants is disregarded for purposes of establishing removal jurisdiction under 28
 20 U.S.C. § 1332. *Fristos v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980)
 21 (unnamed defendants are not required to join in a removal petition). The existence of
 22 Doe defendants 1 through 100, inclusive, does not deprive this Court of jurisdiction.

23 **III. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

24 11. This action is a civil action between citizens of different states and the
 25 amount in controversy exceeds \$75,000, exclusive of interest and costs, and
 26 accordingly, this Court has original jurisdiction under 28 U.S.C. §§ 1332(a).

27 12. “[A] defendant's notice of removal need include only a plausible
 28 allegation that the amount in controversy exceeds the jurisdiction threshold.” *Dart*

1 *Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83 (2014). Defendant is
 2 not obligated to “research, state, and prove the plaintiff’s claims for damages.” *Singer*
 3 *v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *Conrad Assoc. v.*
 4 *Hartford Accident & Indem. Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998).
 5 Defendant can establish the amount in controversy by the allegations in the
 6 Complaint, or by setting forth facts in the notice of removal that demonstrate that the
 7 amount placed in controversy by Plaintiff exceeds the jurisdictional minimum.
 8 *Singer*, 116 F.3d at 377; *Conrad Assoc.*, 994 F. Supp. at 1198. In other words, the
 9 district court may consider whether it is facially apparent from the Complaint that the
 10 jurisdictional amount is in controversy. *Id.* Defendant only needs to show that there
 11 is “a reasonable probability that the stakes exceed” \$75,000. *See Brill v. Countrywide*
 12 *Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005). The Defendant is not required
 13 to provide this Court with “proof” or “evidence” that Plaintiff actually will recover
 14 more than \$75,000; rather, removal is proper as long as the amount in controversy can
 15 be met. *See Brill*, 427 F.3d at 448-49.

16 13. The amount in controversy for purposes of diversity jurisdiction is the
 17 total “amount at stake in the underlying litigation.” *Theis Research, Inc. v. Brown &*
 18 *Bain*, 400 F.3d 659, 662 (9th Cir. 2005). Moreover, “the amount in controversy is
 19 simply an *estimate* of the total amount in dispute, not a prospective assessment of
 20 defendant’s liability.” *Lewis v. Verizon Commc’n, Inc.*, 627 F.3d 395, 400 (9th Cir.
 21 2010) (emphasis added). “In assessing the amount in controversy, a court must
 22 assume that the allegations of the complaint are true and assume that a jury will return
 23 a verdict for the plaintiff on all claims made in the complaint.” *Campbell v. Vitran*
 24 *Express, Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012) (citations omitted). The ultimate
 25 inquiry is what amount is put “in controversy” by the Complaint, not what the
 26 defendant will actually owe. *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986
 27 (S.D. Cal. 2005).

28 14. Plaintiff’s Complaint alleges eleven causes of action against Labcorp.

1 Nine of these claims arise under the FEHA for discrimination based on race, age, and
 2 disability. Plaintiff also alleges violation of California Labor Code Section 1102.5
 3 and intentional infliction of emotional distress. (See generally *Complaint*). Assuming
 4 that Plaintiff's suit is successful, the amount in controversy requirement is clearly met.

5 15. Here, Plaintiff's FEHA related causes of action for race discrimination
 6 and harassment (First and Second causes of action) are alone sufficient to meet the
 7 amount in controversy of \$75,000.

8 16. **Back Pay.** Plaintiff alleges she was discriminated against because of her
 9 race in violation of the FEHA and wrongfully terminated in violation of public policy.
 10 (*See Complaint ¶¶ 63-69, 123-128*). If her claims are successful, Plaintiff would be
 11 entitled to an award of back pay. *See Parker v. Twentieth Century-Fox Film Corp.*, 3
 12 Cal. 3d 176, 181 (1970) (prevailing plaintiffs in employment termination case are
 13 generally entitled to back pay in the amount that they would have received but for the
 14 termination). While Plaintiff did not provide a specific dollar amount for these
 15 claims, assuming, conservatively, that this matter is resolved through trial in 12
 16 months, Plaintiff would be entitled to three years and two months worth of back pay
 17 and benefits¹. At the time her employment ended, Plaintiff was a full time employee
 18 earning approximately \$24.97 per hour, which amounts to \$163,803.20 in back pay
 19 alone². Further, calculating only Plaintiff's lost wages to date—not taking into
 20 account any additional lost wages that would be incurred during the pendency of this
 21 action—she would be entitled to more than \$111,865.60³. This calculation does not
 22 include lost employment benefits, which Plaintiff seeks as well. (*See Complaint ¶*
 23 *66*). Plaintiff's alleged back pay or lost wages to date alone are sufficient to satisfy

24 ¹ Plaintiff's Complaint alleges her employment was terminated on February 1, 2021.
 25 Assuming this matter is resolved through trial within one year after this removal is
 26 filed, Plaintiff will have been out of work for approximately three years and two
 27 months.

28 ² \$24.97 x 40 hrs/week x 164 weeks = \$163,803.20

27 ³ Plaintiff's employment was allegedly terminated on February 1, 2021; therefore, at
 28 the time of the filing of this Notice of Removal, Plaintiff has been out of work for
 approximately two years and two months. \$24.97 x 40 hrs/week x 112 weeks =
 \$111,865.60.

1 the amount in controversy of more than \$75,000 necessary for diversity jurisdiction.

2 **17. Front Pay.** While any award of front pay is highly speculative, courts
 3 that have awarded such damages in FEHA cases have held that a plaintiff could
 4 receive at least two years of front pay. *See Horsford v. Board of Trustees of Calif.*
 5 *State Univ.* 132 Cal. App. 4th 359, 388-89 (2005). Plaintiff could potentially recover
 6 another \$103,875.20⁴ in front pay alone, which is more than the \$75,000 necessary for
 7 diversity jurisdiction.

8 **18. Attorneys' Fees.** Further, Plaintiff has also demanded attorney's fees for
 9 her FEHA claims. (Complaint p. 31 "Prayer" ¶ 4) Attorneys' fees may be awarded to
 10 a prevailing plaintiff in a FEHA action. *See Cal. Gov't Code § 12965(b); see also*
 11 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) (where
 12 attorneys' fees are allowed by statute, they are considered as part of the amount in
 13 controversy calculation); *see also Silo v. CHW Med. Found.*, 27 Cal. 4th 1097, 1102
 14 (2002) (award of \$155,245.75 in attorney fees in a FEHA related lawsuit). This
 15 calculation also includes all attorneys' fees likely to be incurred through trial of an
 16 action. *See Fritsch v. Swift Transp. Co. of Ariz.*, 899 F.3d 785, 794 (9th Cir. 2018).
 17 One court in the Central District of California has opined that a reasonable hourly rate
 18 for an attorney would be at least \$300 and a reasonable number of hours would be at
 19 least 100–300 hours. *Sasso v. Noble Utah Long Beach, LLC*, No. CV 14-09154-AB
 20 AJWX, 2015 WL 898468, at *1 (C.D. Cal. Mar. 3, 2015). Those assumptions would
 21 lead to an attorneys' fee award of between \$30,000 and \$90,000. *See id.* If Plaintiff
 22 litigated this case through trial and prevailed, it is reasonable to assume that the
 23 recovery of fees itself would exceed \$75,000.

24 **19.** Based on the foregoing, there is ample evidence that the amount in
 25 controversy, based on the totality of Plaintiff's claims and prayer for relief as it relates
 26 to her FEHA related claims for race discrimination exceeds \$75,000. Removal is
 27 appropriate and proper.

28 ⁴ \$24.97 x 40 hrs/week x 104 weeks = \$103,875.20.

1 **III. THIS REMOVAL NOTICE IS PROCEDURALLY PROPER**

2 **20. Federal Court Jurisdiction.** The United States District Court for the
 3 Central District of California has jurisdiction over this case pursuant to 28 U.S.C.
 4 § 1332(a)(1) because the matter in controversy exceeds the sum of \$75,000, exclusive
 5 of interest and costs, and the action is between citizens of different states. The
 6 citizenship of Defendants Humphrey, Duffey, Nelson, Williams, Letty, and Lana must
 7 be disregarded for purposes of diversity jurisdiction as each is a fraudulently joined
 8 defendant. (*See* concurrently filed Memorandum of Points and Authorities).

9 **21. The Removal Venue Is Proper.** Removal is properly made to the
 10 United States District Court for the Central District of California under 28 U.S.C.
 11 § 1441(b), because the Superior Court of the State of California, County of Riverside,
 12 where the State Court Action is currently pending, is within the Central District of
 13 California.

14 **22. The Removal Is Timely.** Plaintiff served her Complaint on Labcorp by
 15 Notice and Acknowledgment of Receipt, which Labcorp executed on March 20, 2023.
 16 Pursuant to 28 U.S.C. § 1446(b) and Federal Rules of Civil Procedure 6 and 81(c),
 17 Defendant has timely filed this Notice of Removal within 30 days of service of the
 18 Complaint.

19 **23. Labcorp Has Sufficient Consent.** Labcorp is not required to investigate
 20 the identity of the unnamed defendants nor to obtain their consent for removal. *See* 28
 21 U.S.C. § 1441(a); *Necombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).
 22 In any event, no Doe defendants have been served. Labcorp is not required to obtain
 23 consent to remove from defendants who have not been served. *See Salveson v.*
 24 *Western States Bankcard Ass'n*, 731 F.2d 1423, 1429 (9th Cir. 1984), superseded by
 25 statute on other grounds as stated in *Ethridge v. Harbor House Restaurant*, 861 F.2d
 26 1389, 1392 (9th Cir. 1988). Therefore, Labcorp has sufficient consent to remove the
 27 State Court Action.

24. Service of Notice of Removal. Labcorp will promptly file a copy of this Notice of Removal with the Clerk of the Superior Court of the County of Riverside, and serve a copy on Plaintiff, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Labcorp respectfully requests the removal of the State Court Action from the Superior Court of the State of California, County of Riverside, to the United States District Court for the Central District of California.

K&L GATES LLP

Dated: April 19, 2023

By: /s/ Connor Meggs
Christopher J. Kondon
Saman M. Rejali
Connor J. Meggs

Attorneys for Defendant
LABORATORY CORPORATION OF
AMERICA

1 **EXHIBIT LIST**

2 Exhibit	3 Description	4 Removal Page Number
A	Complaint	001 - 032
B	Summons	033 - 034
C	Civil Case Cover Sheet	035 - 037
D	Notice of Case Assignment	038 - 039
E	Certificate of Counsel	040 - 041
F	Notice of Case Management Conference	042 - 061